

FILED

2004 FEB 10 AM 10:20

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

CLERK
U.S. BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE: Chapter 11
Brac Group, Inc.,
Debtor. Bankruptcy #02-12152 (CGC)

Wilmington, DE
January 12, 2004
2:10 p.m.

TRANSCRIPT OF MOTIONS HEARING
BEFORE THE HONORABLE CHARLES G. CASE
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For The Debtor:

Matthew A. Clemente, Esq.
Sidley Austin Brown & Wood
Bank One Center
10 South Dearborn Street
Chicago, IL 60603

Kenneth Wile, Esq.
Sidley Austin Brown & Wood
Bank One Center
10 South Dearborn Street
Chicago, IL 60603

Larry Nyhan, Esq.
Sidley Austin Brown & Wood
Bank One Center
10 South Dearborn Street
Chicago, IL 60603

Edmon L. Morton, Esq.
Young Conaway Statgatt
& Taylor, LLP
The Brandywine Bldg.
1000 West Street-17th Fl.
Wilmington, DE 19801

Witter's Cramp, Inc.

Certified Court Transcribers

732-329-0191

1 For The Official Committee: William P. Bowden, Esq.
2 of Unsecured Creditors Ashby & Geddes
3 222 Delaware Ave.-17th Fl.
4 Wilmington, DE 19899
5
6 Harold J. Marcus, Esq.
7 Brown Rudnick Berlack
8 & Israels
9 One Financial Center
10 Boston, MA 02111
11
12 For Cendant Corporation: Anthony W. Clark, Esq.
13 Skadden Arps Slate
14 Meagher & Flom, LLP
15 One Rodney Square
16 Wilmington, DE 19899
17
18 For Ace USA Companies: Linda M. Carmichael, Esq.
19 White & Williams, LLP
20 824 N. Market Street-Ste. 902
21 Wilmington, DE 19801
22
23 For Jaeban: Thomas Briggs, Esq.
24 Morris Nichols Arsht
25 & Tunnell
1201 N. Market st.
Wilmington, DE 19899

For U.K. Adminsitrators: Mark Collins, Esq.
Richards Layton & Finger
One Rodney Square
Wilmington, DE 19801

Audio Operator: Brandon J. McCarthy

Transcribing Firm: Writer's Cramp, Inc.
6 Norton Rd.
Monmouth Jct., NJ 08852
732-329-0191

Proceedings recorded by electronic sound recording, transcript
produced by transcription service.

Writer's Cramp, Inc.

Certified Court Transcribers

732-329-0191

1 THE CLERK: All rise. The United States Bankruptcy
2 Court for the District of Delaware is now in session, the
3 Honorable Charles G. Case presiding.

4 THE COURT: Good afternoon. Please be seated.

5 MR. MORTON: Good afternoon, Your Honor. Ed Morton
6 from Young Conaway on behalf of the Debtor's, Brac Group, Inc.,
7 et al. We'll be going today, Your Honor, by the Amended Notice
8 of Agenda that was forwarded to your Chambers. I'm not sure if
9 Your Honor has a copy. If not I have an extra that I can --

10 THE COURT: I do.

11 MR. MORTON: Thank you, Your Honor. As Your Honor
12 will see, the -- probably the first matter that comes
13 numerically on the docket is the Notice of Hearing to Consider
14 the Approval of the Disclosure Statement. There is a status
15 presentation that has been prepared for Your Honor, but since
16 several of the matters in that presentation, not the least of
17 which we'll scheduling, relate also to the Jaeban Status
18 Conference that's at the end. What I would propose to do is to
19 go through the brief uncontested matters we have to the extent
20 there even needs to be a presentation and then take up those
21 matters at the end of the hearing, if that's acceptable.

22 THE COURT: All right.

23 MR. MORTON: Thank you, Your Honor. Turning to
24 matters number 10 and 11 on the agenda, these are two motions
25 to which there was no objection and a Certificate of No

Witter's Cramp, Inc.

Certified Court Transcribers

732-329-0191

1 Objection had been filed prior to the filing of this agenda. I
2 certainly have forms of order with me to the extent Your Honor
3 has not already signed those motions.

4 (Pause in proceedings)

5 THE COURT: You're so far away.

6 (Laughter)

7 THE COURT: Every time I come I'm in a different
8 courtroom. I've not signed them. I'm looking -- what I have
9 here is the Order Approving the Rejection of Certain Unexpired
10 Leases --

11 MR. MORTON: Your Honor --

12 THE COURT: -- which is not that one.

13 MR. MORTON: Sir, that relates to matter number 13.
14 We did file a certification late on that one merely because we
15 had given one party additional time to review the motion. That
16 party did not object and therefore it is also uncontested.

17 THE COURT: Well, if you have other -- hold on --
18 here's the C.N.O. -- binder. We're talking now about Veronica
19 Nichols, correct?

20 MR. MORTON: That's correct, Your Honor.

21 THE COURT: Yes, I do have that.

22 (Pause in proceedings)

23 THE COURT: Okay.

24 MR. MORTON: Your Honor, the next matter would be our
25 365(d)(4) Extension Motion. Again, that -- there were no

Writer's Cramp, Inc.

Certified Court Transcribers

732-329-0191

1 objections filed to that motion and it should be contained in
2 the C.N.O. binder that Your Honor is holding.

3 (Pause in proceedings)

4 THE COURT: I've signed the order.

5 MR. MORTON: Thank you, Your Honor. That brings us to
6 matters 12 and 13. Again, merely because of the objection
7 deadlines related to certain Parties-in-Interest, these matters
8 were the subject of later file certifications. I believe, Your
9 Honor, as you've mentioned that you have the certification on
10 the matter of number 13.

11 (Pause in proceedings)

12 THE COURT: Yes, I do.

13 (Pause in proceedings)

14 MR. MORTON: Your Honor, matter number 12 is a matter
15 by the Committee. I'll let Mr. Bowden present that.

16 (Pause in proceedings)

17 MR. BOWDEN: Your Honor, good afternoon. For the
18 record, Bill Bowden of Ashby & Geddes for the Creditors
19 Committee. Your Honor, just an introductory matter as well,
20 with me at counsel table is Hal Marcus from the Brown Rudnick
21 Berlack Israels firm, as well. Your Honor, item 12 was the
22 Committee's Application to Supplement the Engagement of Linda
23 Burch. No objections were filed and served. Ms. Harrison on
24 behalf of the United States Trustee had asked for an extension
25 of time, which obviously we had no problem giving her, and has

Writer's Cramp, Inc.

Certified Court Transcribers

732-329-0191

1 not objected. We filed a Certification of Counsel last
2 Wednesday, I believe. I don't know if it made it into the
3 C.N.O. binder or not. If not, Your Honor, assuming Your Honor
4 has no questions, I have a Form of Order with me.

5 THE COURT: I did not see it in the C.N.O. binder.

6 MR. BOWDEN: Your Honor, may I approach with the Form
7 of Order?

8 THE COURT: Yes, please.

9 MR. BOWDEN: Thank you.

10 (Pause in proceedings)

11 THE COURT: I've signed the order.

12 MR. BOWDEN: Thank you, Your Honor.

13 (Pause in proceedings)

14 MR. MORTON: Your Honor, I believe then this would be
15 an appropriate time to circle back to the disclosure statements
16 portion of the hearing. Mr. Nyhan of the Sidley Austin Brown &
17 Wood firm is here to present that matter.

18 (Pause in proceedings)

19 MR. NYHAN: Good afternoon, Your Honor.

20 THE COURT: Hello Mr. Nyhan. Nice to see you.

21 MR. NYHAN: Nice to see you. It's a pleasure to be in
22 front of Your Honor again, all though I must confess that the
23 ambient climate has deteriorated significantly since the last
24 hearing I attended.

25 THE COURT: I just assumed that you waited until the

Writer's Cramp, Inc.

Certified Court Transcribers

732-329-0191

1 weather was like Chicago before you came to Delaware.

2 (Laughter)

3 MR. NYHAN: Your Honor, but for the urgency of the
4 Committee, I'd be more than happy to do that.

5 (Laughter)

6 MR. NYHAN: Your Honor, what we'd like to do today, if
7 it's acceptable to the Court is provide a brief overview of
8 where we have been and where we are going with this case and
9 then suggest a timetable for getting to disclosure and
10 ultimately confirmation. And then briefly address -- excuse
11 me, the objections that have been filed, how we intend to
12 address those, recognizing that we are not asking the Court to
13 rule on any objections today, but rather will request that the
14 disclosure statement hearing itself be adjourned and that it be
15 taken up in a -- in a few weeks.

16 (Pause in proceedings)

17 THE COURT: Please proceed.

18 MR. NYHAN: Thank you, Your Honor. This case, Your
19 Honor, was filed on July 29th of 2002. Shortly -- actually
20 prior to the initiation of the case, the company's -- Budget
21 Rent-A-Car had engaged investment bankers and embarked upon a
22 program to either find a source of capital in order to effect
23 an internal reorganization or alternatively to find a buyer so
24 that the assets could be monetized for the benefit of the
25 Creditors of the company. Prior to the filing, Budget had

Writzer's Cramp, Inc.

Certified Court Transcribers

732-329-0191

1 progressed significantly in sale negotiations with Cendant
2 Corporation in an acquisition subsidiary called Cherokee. And
3 after the Petition was filed, and after financing was put in
4 place, pursued essentially an auction based upon a stalking
5 horse bid promoted by Cendant and Cherokee. Cendant and
6 Cherokee agreed to purchase -- to acquire all of Budget's
7 operations in the United States, Canada, the Caribbean, Latin
8 America and Asia Pacific. As the deal was ultimately
9 structured, Cherokee and Cendant agreed to assume \$2.8 billion
10 of Fleet debt, about \$420,000,000 of Secured Pre-Petition bank
11 debt, \$75,000,000 in Debtor-in-Possession financing,
12 substantially all trade claims, employee claims, tort claims --
13 there is a dispute, I don't mean to suggest that there isn't a
14 dispute is to the scope of that assumption, but in general,
15 operating liabilities of the company were assumed. In
16 addition, Cendant agreed to pay and did in fact pay
17 \$110,000,000 in cash, plus an additional \$40,000,000 in
18 transaction costs, that is, they agreed to help the company
19 defray approximately \$40,000,000 in transaction costs. And
20 they assumed over 7,000 executory contracts. That transaction,
21 Your Honor, was approved by Judge Walrath and closed on
22 November 22 of '02. Cendant did not acquire the operations of
23 Budget, which are commonly referred to -- or were referred to
24 as E.M.E.A. or Europe, Middle East, Africa and parts of Asia.
25 Those operations continued subsequent to the closing. As part

Writer's Cramp, Inc.

Certified Court Transcribers

732-329-0191

1 of the transaction with Cendant, a license was negotiated
2 pursuant to which the Budget Estate was entitled to continue
3 using the Budget trademark and trade name in those regions for
4 a significant period of time. We then embarked upon a program
5 to either devise an internal reorganization for E.M.E.A. or
6 find a buyer. Creditor pressure in Europe forced us to take
7 the step of initiating in January of 1903 -- 1903 -- 2003, in
8 administration in the High Court in London for BRAC, that's
9 Budget Rent-A-Car International. BRAC is a U.S. corporation,
10 but was the international holding company for the Budget Group.
11 And as such, owned the stock of the various corporations that
12 carried on business throughout, in the U.K. throughout Europe,
13 throughout E.M.E.A. Working together with the Administrator,
14 Simon Freekley and Urpul Sind, who were appointed by the High
15 Court as Administrators in the administration of BRAC and with
16 the Creditors Committee, we jointly negotiated a sale of the
17 European operations to Avis Europe. That transaction was
18 ultimately approved by this Court, by the Administrators. It
19 called for the acquisition of the operating assets in Europe,
20 as well as the licensing agreement for 20 mile -- excuse me --
21 \$20,000,000 cash U.S., plus the assumption of considerable
22 amount of liabilities. That sale was approved in late February
23 of '02 -- excuse me -- '03, Your Honor. After closing the Avis
24 Europe sale transaction, the parties focused on bringing a
25 conclusion to the case, and in particular a Plan of

Writer's Cramp, Inc.

Certified Court Transcribers

732-329-0191

1 Reorganization. The principal issue -- there are some
2 litigation issues, for example, there is a significant claim
3 against the Sixth company in Germany, known as the Sixth
4 Litigation. That has been prosecuted in Germany and sustained
5 a judgment against the Sixth and we're in the appeal process at
6 this point. But by and large the assets of the Budget Group --
7 or what was formerly known as the Budget Group, have now been
8 monetized and the principal issues preventing the filing and
9 consummation of a plan, have been the issue of allocating the
10 value that's been received in these transactions as between, on
11 the one hand, the U.S. Creditor Body, and on the other, the
12 Administrators representing the interests of the U.K.
13 Creditors. Settling those issues prove more difficult than
14 people had originally expected. They are complicated, for
15 example, the allocation of purchase price is in dispute, both
16 with respect to the Cendant transaction and in that respect,
17 because the -- part of the operations acquired by Cendant,
18 specifically Latin America and Australia, were owned by BRAC
19 and therefore, the value allocable to those, that portion of
20 the sale is claimed by the BRAC Estate. Conversely, the
21 license which BRAC enjoyed for international operations was
22 owned by the U.S. Budget -- BRAC Estate and therefore, the
23 Creditors in the U.S. laid claim to some portion of the value
24 paid by Avis Europe in respect of the sale of E.M.E.A. There
25 was also significant in our company claims between the Estates,

Writer's Cramp, Inc.

Certified Court Transcribers

732-329-0191

1 questions about how much of the post-petition financing, which
2 was supported on the backs largely of US Creditors, should have
3 been borne by the UK and the BRAC Estate, and then finally,
4 disputes over who was entitled to whatever value was realized
5 from the Sixth Litigation. As Your Honor is aware, the
6 Disclosure Statement and Plan that we filed left those issues
7 unresolved with the expectation and hope that there would be a
8 resolution between the Administrator and the US Creditors
9 Committee and I'm happy to report to the Court today that as of
10 the end of last week, an agreement has in fact been reached and
11 at the conclusion of my comments, I will yield the podium to
12 Counsel for the Administrator, Mr. Collins and Counsel for the
13 Committee, Mr. Marcus to brief the Court on the salient
14 features of that settlement. But suffice it to say that the
15 principal obstacle, at least from our perspective, of moving
16 forward with this Plan has now been resolved. We will of
17 course, Your Honor, amend the Plan and Disclosure Statement to
18 reflect the terms of the settlement. It is our understanding
19 that the Committee and the Administrator have agreed or that
20 the settlement should proceed to hearing with dispatch and
21 therefore, before I turn to the objections that have been
22 raised at the Disclosure Statement and put it in context for
23 the Court, what we will request at the conclusion of today's
24 hearing is that we be given a time line along the following
25 lines. It is our expectation that a Motion to Approve the

Writer's Cramp, Inc.

Certified Court Transcribers

732-329-0191

1 settlement will be filed on Wednesday or Thursday of this week.
2 We also fully expect that we will be in a position to file an
3 Amended Disclosure Statement with some technical amendments to
4 the Plan by July -- excuse me -- January 25th. Those
5 amendments, we think, will in substantial part, resolve the
6 objections that are pending against the Disclosure Statement.
7 And we would request, subject obviously to the Court's
8 availability, that we be provided with a hearing in early
9 February, preferably around the 4th or 5th of February, to
10 consider both the adequacy of the disclosure and the propriety
11 of the settlement that has been negotiated involving the
12 allocation issues. If I may, Your Honor, what I would propose
13 to briefly discuss the nature of the objections that are --
14 have been filed and how we propose to resolve them to help fill
15 in the context for the time line that I've requested.

16 (Pause in proceedings)

17 MR. NYHAN: Your Honor, we have prepared a brief
18 summary -- that is the Debtors have prepared a brief summary
19 sheet which reflects our summary of what the different
20 objections contained and include as exhibits, all of the
21 objections as well as the Plan and Disclosure Statement. If I
22 may approach it may be helpful to the Court?

23 THE COURT: Thank you.

24 (Pause in proceedings)

25 MR. NYHAN: The summary page, Your Honor, should be

Writer's Cramp, Inc.

Certified Court Transcribers

732-329-0191

1 the first page in the binder and I would propose simply to walk
2 through the principal objections in order. Your Honor will
3 note, we have divided the responses into Roman number I,
4 Objections and then on the second page Roman number II,
5 Responses. I don't intend to spend much time on the second
6 category because those are principally letters that had been
7 received. They have not been filed with the Court. We will --
8 we do propose to file all of them with the Court and we are
9 going to respond with correspondence to these individuals. The
10 vast majority of the letters really identify claims that these
11 individuals are asserting against the Estate, rather than
12 dealing with anything having to do with the objection -- excuse
13 me -- adequacy of disclosure. We intend to determine whether
14 their claims have in fact been scheduled and if not inform
15 them. But if they have been inform them of that, if they have
16 not inform them of that fact, as well as the bar date and the
17 purpose of the Disclosure Statement hearing. I would like to
18 direct my -- but each one of those letters is included in the
19 binder for the Court to review if Your Honor wishes to.

20 (Pause in proceedings)

21 MR. NYHAN: Let me turn then, if I might, to the first
22 objection, which is the objection lodged by the Commonwealth of
23 Pennsylvania and it's a fairly straightforward objection. The
24 Commonwealth asserts what we understand to be a priority tax
25 claim. Their objection challenges the failure to -- or the --

Writer's Cramp, Inc.

Certified Court Transcribers

732-329-0191

1 their interpretation of the Plan, that the penalty associated
2 with that claim will not be paid under the Plan. Your Honor,
3 we intend to deal with that objection two ways. First, it's
4 really a Plan objection, it's not a Disclosure Statement
5 objection. But second, we are going to clarify the Plan to the
6 extent that they intend to assert a penalty as a non-priority
7 claim. We are going to make it clear that any objection to the
8 allowability of that claim will be handled in the claim
9 objection process and will be -- not be foreclosed -- excuse me
10 -- by the Plan.

11 (Pause in proceedings)

12 MR. NYHAN: The second set of objections were lodged
13 by the Insurance Company of North America. This is an
14 insurance company who believes, we think, that they have
15 insurance policies -- extant insurance policies and have
16 questioned the treatment of their insurance policies under the
17 Plan. They have also raised general disclosure objections.
18 We're a little bit puzzled about this particular claim, Your
19 Honor. We have reviewed our records -- or I should say are in
20 the process of reviewing them. We do know that this is -- we
21 did have policies for calendar years 1987 through 1992 with
22 this insurance company. These policies were primarily for
23 workman's comp and auto liability claims-made policies. They
24 involved upfront premiums and retrospective premiums.
25 According to our records, the last policy year expired in 1993

Writer's Cramp, Inc.

Certified Court Transcribers

732-329-0191

1 and we paid what we understood to be a final retrospective
2 premium in 2002 and obtained a release of a letter of credit.
3 So we do not understand that this insurance company is a
4 Creditor or that we have any continuing relationship with them,
5 but we do intend to get to the bottom of this when their
6 counsel can provide us with additional information. And if,
7 and to the extent a policy remains live, we will deal with that
8 appropriately through either the schedule of assumed contracts
9 or reflecting the fact that we are not assuming the agreement.
10 We'll simply get to the bottom of it.

11 (Pause in proceedings)

12 MR. NYHAN: The third objection, Your Honor, is from
13 the Paella Properties Group. Their objection is fairly
14 straightforward. Under the Plan, the North American -- the
15 U.S. Estates are to be substantively consolidated and they
16 have, Paella has requested further disclosure concerning facts
17 that are relevant to substantive consolidation. We do intend
18 to amend the Disclosure Statement to add additional
19 information, but we have also provided to counsel to Paella all
20 the information that he has requested that is in our custody
21 and we will continue to cooperate with them pending the further
22 hearing on this. Hopefully we can resolve this objection
23 completely.

24 THE COURT: All right.

25 MR. NYHAN: The final objection, Your Honor, is filed

Writzer's Cramp, Inc.

Certified Court Transcribers

732-329-0191

1 by Cendant and Cherokee. And that -- there are several
2 components of that. The first is that the Disclosure Statement
3 fails to adequately address litigation that is pending between
4 the Estate and Cherokee. That litigation involves a number of
5 issues, one of which is Cendant's claim or -- excuse me --
6 Cherokee's claim that they are owed roughly \$3.6 million as an
7 administrative priority claim. We agree that's an issue. We
8 will amend our disclosure to fully disclose the fact of the
9 litigation and the issues that are involved. They've also
10 objected that we have not discussed the litigation in so far as
11 it pertains to the dispute between the Estate and Cherokee over
12 who has responsibility for a number of personal injury claims
13 and a number of employee-related liability claims. The
14 litigation that -- in that litigation, the Debtors maintain
15 that Cherokee assumed most of these obligations in connection
16 with their acquisition of the North American operations.
17 Cherokee in turn has denied that they've assumed them, or at
18 least assumed all of them and obviously that litigation will
19 proceed in its normal course. The issue for disclosure, we
20 think, is to number 1, make clear to all the Creditors in the
21 Estate the fact and contours of the litigation and second to
22 make clear to those persons who may be Personal Injury
23 Claimants that there is a dispute, that what their treatment --
24 - their actual treatment at the end of the day will turn or may
25 turn on the resolution of that dispute and that to the extent

Writer's Cramp, Inc.

Certified Court Transcribers

732-329-0191

1 that Cherokee disputes the assumption of a particular personal
2 injury claim or employee liability claim, we will make it clear
3 that those Creditors will be asked to vote in the Class of
4 General Unsecured Creditors. So, we believe that we can
5 adequately resolve these objections -- that portion of the
6 objections through improved disclosure. The next point raised
7 by Cherokee is the suggestion that the Plan as drafted imposes
8 upon Cherokee a third-party release, that is, imposes upon
9 Cherokee a release of claims in favor of third-parties. That
10 was not our intent and we will clarify the Plan accordingly.
11 Similarly, Cherokee has -- contends that the Plan as presently
12 drafted affects a discharge of Cherokee's claims under the
13 Asset Purchase Agreement. Again, that was not the intent and
14 I'm sure that we can come up with language which will satisfy
15 them that that is not the effect of the Plan. Cherokee and
16 Cendant also claim that the plan can not be confirmed because
17 they -- their administrative priority claim, 3.6 million may be
18 greater than that. They assert that the Plan contemplates that
19 that claim will be estimated and that it can not as a matter of
20 law be estimated. And we would propose to modify the Plan and
21 Disclosure Statement to reflect the fact that their objection
22 to an estimation is preserved, that is confirmation the Plan
23 will not preclude them from arguing that if we ever decide that
24 it is appropriate to try to estimate a claim. Hopefully we'll
25 never get there. And finally, Cherokee --

Writer's Cramp, Inc.

Certified Court Transcribers

732-329-0191

1 THE COURT: What does their proposed or alleged
2 administrative priority claim arise out of?

3 MR. NYHAN: It arises out of certain obligations under
4 the Asset Purchase Agreement, which Cherokee believes the
5 Estates should have borne and Cherokee paid those obligations.
6 So they believe that in effect it -- without getting technical
7 on the contract itself, I would liken it to -- an adjustment to
8 the purchase price. Incidentally, Your Honor, the Debtors have
9 asserted in that litigation that Cherokee owes the Estate a
10 number slightly in excess of \$2,000,000, I believe. So that
11 litigation is fairly right, but at least in terms of the
12 identification of the issues.

13 (Pause in proceedings)

14 MR. NYHAN: The final point raised by Cherokee is a
15 request or demand that their -- the disputed claim reserve for
16 their administrative claim be segregated separately from other
17 disputed claim reserves. While we don't think they're entitled
18 to that, we don't have any problem providing for that. So we
19 will amend the Plan accordingly. Again, Your Honor, I'm not --
20 it's not my expectation that we're going to argue these or that
21 Your Honor will resolve any of these. We do, though, believe
22 that the vast majority of the objections that have been filed
23 will be resolved by the amendments that I've suggested both to
24 the Plan and the Disclosure Statement. With that, Your Honor,
25 I would respond to whatever questions the Court might have and

Witter's Cramp, Inc.

Certified Court Transcribers

732-329-0191

1 then subject to identifying a schedule, turn the podium over to
2 the Committee and the Administrator and to the extent Your
3 Honor would be interested in the terms of the settlement that
4 they've reached.

5 THE COURT: All right, thank you.

6 (Pause in proceedings)

7 MR. MARCUS: Good afternoon, Your Honor. Harold
8 Marcus from Brown Rudnick Berlack & Israels on behalf of the
9 Creditors Committee. We'd like to summarize, if I could,
10 somewhat general terms of the settlement that has been reached
11 between the U.K. Administrators and the U.S. Creditors
12 Committee of Budget. Basically the terms are as follows: The
13 Cendant sale proceeds will be allocated 100% to the U.S.
14 Estates. The Avis Europe sale proceeds will be allocated 100%
15 to the BRAC Estate. The first million dollars of what we refer
16 to as Jaeban cure proceeds, which return to the Estates will be
17 in fact allocated to the U.S. Estates with a balance of the
18 roughly \$4.5 million cure account allocated to the BRAC Estate.
19 The Sixth Litigation proceeds that Mr. Nyhan referred to a few
20 minutes ago will be allocated as follows: The first million
21 dollars to the BRAC Estate, with the balance shared 50/50
22 between the U.S. and BRAC Estates. The U.K. Administrators,
23 however, will have sole authority to settle or resolve the
24 Sixth Litigation. In addition, certain accrued and unpaid
25 professional fees will be shared by the Estates. Roughly

Witter's Cramp, Inc.

Certified Court Transcribers

732-329-0191

1 \$3,000,000 of U.S. administrative expense and priority claims
2 will be paid by the BRAC Estate. These relate, Your Honor, to
3 the period of time subsequent to the filing of the U.S.
4 bankruptcy case of BRAC and prior to the commencement of the
5 U.K. administration case for BRAC. And finally there is a
6 waiver of claims binding against these Estates -- mutual
7 releases that will be entered into. So, the Creditor's
8 Committee, Your Honor, is indeed pleased that the parties have
9 reached a settlement. We do anticipate filing as quickly as we
10 can this week, a Motion to Approve the settlement. I might
11 add, Mr. Nyhan remarked at the very beginning of the hearing
12 that the Committee is pushing on the Debtor to keep things
13 moving. Indeed the Committee is concerned about the cost of
14 keeping this liquidation case operating, so to speak. There is
15 a huge cost factor. We're very supportive of having as early a
16 disclosure -- substantive Disclosure Statement hearing and Plan
17 confirmation if possible. I hope the Court will keep that in
18 mind as we discuss the specific dates that Mr. Nyhan has
19 proposed. I certainly appreciate and understand the logic of
20 the proposed dates. There is still a few items to deal with
21 before we have that substantive hearing, but nonetheless we do
22 need to move this case on. Thank you.

23 THE COURT: Thank you. Anybody else?

24 (Pause in proceedings)

25 MR. CLARK: Good afternoon, Your Honor. Tony Clark of

Writer's Cramp, Inc.

Certified Court Transcribers

732-329-0191

1 Skadden Arps for Cendant and Cherokee acquisition. Just
2 briefly, I'm not going to argue, our objection has been filed.
3 I do want to state for the record that the summary, and I
4 understand what Mr. Nyhan was giving was just a summary and not
5 a verbatim explanation of what our objection is, but the
6 summary doesn't include everything that's in our objection, but
7 I assume we'll talk about it more and deal with it further
8 before we come before Your Honor for a substantive hearing on
9 the Disclosure Statement. So I'm just going to reserve our
10 rights.

11 THE COURT: Thank you.

12 MR. CLARK: Thank you, Your Honor.

13 (Pause in proceedings)

14 MS. HARRISON: Good afternoon, Your Honor. Margaret
15 Harrison, Office of the United States Trustee. I had been
16 granted an extension of time to object to the Disclosure
17 Statement until the settlement had been reached and the
18 modifications had been made. So I just wanted to preserve my
19 rights to object to the Disclosure Statement as modified.

20 THE COURT: Thank you.

21 MR. NYHAN: I concur with both of those, Your Honor.
22 Your Honor, I should note that in proposing the date that I
23 did, I recognize that we do have an Omnibus Hearing scheduled
24 for February 17th here and that if we depart from that -- if
25 it's possible to depart from that, it may be necessary to

Witler's Cramp, Inc.

Certified Court Transcribers

732-329-0191

1 proceed with a hearing in a different venue and if the parties
2 are all prepared to do that if that is something that works for
3 Your Honor.

4 THE COURT: The answer is I don't know. That's what
5 I've been typing up here while you all have been talking. I've
6 been making some inquiries. And frankly, what I would like to
7 understand is what difference the two weeks makes? I had this
8 conversation with some folks in another case recently and I
9 know their answer was \$15,000,000 or something like that and so
10 that had a -- made an impression on me because of the burn rate
11 of that particular debtor. But, it is -- it is difficult to
12 schedule Delaware cases in Arizona competing with the Delaware
13 -- excuse me, with the Arizona docket, which in the last few
14 months has become more crowded than it has been in a while.
15 Perhaps, since the time that you were in Arizona on a regular
16 basis, Mr. Nyhan, when it was quite crowded. So, I do want to
17 ask the question every time, to have counsel tell me why is it
18 -- why does the two weeks matter? Because when I'm here I can
19 give you my full attention and not worry about the fact that
20 you may be bumping up against something else that I've already
21 scheduled or without having to make other kinds of
22 arrangements.

23 MR. NYHAN: I appreciate that, Your Honor. Let me
24 turn that over to the Committee, but say that two -- make two
25 comments. First, certainly it is not our expectation that were

Writer's Cramp, Inc.

Certified Court Transcribers

732-329-0191

1 we to depart from our normal practice for purposes of this one
2 hearing, which we don't expect to be an evidentiary hearing or
3 a lengthy hearing for that matter, that we would not -- we
4 would depart only for purposes of that hearing in order to move
5 more quickly to confirmation, with every expectation that
6 confirmation would be here when Your Honor is available.
7 Second, I will say that the Committee has endeavored to move
8 this case forward. Let me state it differently. All parties
9 have moved -- endeavored to move the case forward. There have
10 been many issues that people have had to grapple with in order
11 to move it across the goal line. But the Committee has been
12 sensitive to the delay and has been consistent in their request
13 that things move forward and we will do whatever we can -- we --
14 -- the Debtor, to accommodate their desire to get it there.

15 MR. MARCUS: The specific answer, Your Honor, is that
16 the two weeks could mean, you know, as much as \$600,000 or
17 \$700,000 just based upon the burn rate of professional fees
18 running roughly 1-2, 1-3 a month. Now granted some of that
19 consisted of litigation preparation and we now have a proposed
20 settlement with the U.K. Administrators. However, there's
21 still the Cendant issues that are outstanding including
22 litigation -- potential litigation and certainly negotiations
23 and work on the Cendant matters. It's not -- I can't tell you
24 it's \$15,000,000. On the other hand, for this Committee, with
25 -- in a case where of course there's no operating business,

Writer's Cramp, Inc.

Certified Court Transcribers

732-329-0191

1 just a pot of money that's dissipating, the two weeks strike,
2 the Committee as extremely significant.

3 THE COURT: But on the other hand, the fact that there
4 are two more weeks doesn't mean that every professional has to
5 write down another 8.0 on their sheet everyday. Presumably,
6 some of the professionals who are paid on a monthly basis, the
7 financial professionals -- are their financial professionals
8 who are still being paid on a monthly basis in this case?

9 MR. MARCUS: There have been yes, Your Honor. I --

10 THE COURT: Are there still at this point is what I'm
11 saying?

12 MR. NYHAN: Well not for the Debtor, Your Honor.

13 MR. MARCUS: Jefferies of -- the financial advisor for
14 the Committee has been paid thusly, but won't be going forward.

15 THE COURT: So, just to follow up on the analogy of
16 the other case, I mean, there was an actual 3/4 of a million
17 dollars a day operating burn rate that was creating, you know,
18 over 21 days, a \$15,000,000 loss. That was a significant
19 issue. But, it doesn't sound like that's really happening in
20 this case.

21 MR. MARCUS: No, this is a different situation, Your
22 Honor. But, the fees have been -- have been significant in the
23 context -- moreover the context includes, you know, I'd say
24 months of negotiations and it's taken a long and hard road to
25 get to this point, Your Honor. We certainly would like to do

Writer's Cramp, Inc.

Certified Court Transcribers

732-329-0191

1 everything we can to, you know, keep up the momentum and get
2 these matters resolved as quickly as we can, subject to your
3 calendar and schedule. Thank you.

4 THE COURT: Okay. Right, so you do have a full
5 fledged schedule proposal, Mr. Nyhan?

6 (Pause in proceedings)

7 MR. NYHAN: Well, Your Honor, I have one, it's a
8 question of which piece of paper I have it on. Your Honor, we
9 were not contemplating going beyond the scheduling a hearing
10 for the approval of disclosure and approval of the settlement
11 motion that will be filed within the next couple of days. So
12 our proposal would be to schedule a hearing during the week
13 around the 4th, 5th or 6th of February with a view towards --
14 we are told by the Committee and the Administrator that the
15 settlement motion can be filed or will be filed by Wednesday or
16 Thursday of this week. Assuming a 20 day notice period on that
17 motion, a hearing in -- during that first week of February --
18 perhaps the second week of February would be adequate. We will
19 be in a position to file an Amended Plan and Disclosure
20 Statement addressing the changes that I alluded to earlier by
21 the 25th of January, so parties will have ample opportunity to
22 look at that before the resumed hearing. With respect to
23 confirmation, we would hold off on any request until we
24 conclude the hearing on the approval of the Disclosure
25 Statement.

Witter's Cramp, Inc.

Certified Court Transcribers

732-529-0191

1 THE COURT: Well, I know that the 5th and 6th are not
2 possible. The 4th may be possible. I just don't know what my
3 calendar is in Arizona, that's why I've sent an e-mail to see
4 if I can find out. The 5th I'm traveling and the 6th I'm out
5 of the state. Then but I'm back the next week, the week of the
6 9th and then the week of the 16th is when I'm here. I can't
7 commit to give you the 4th until I get a response --

8 MR. NYHAN: Understood, Your Honor.

9 THE COURT: -- and if -- I understand that the issue
10 is you'd like to do this as quickly as possible. That is a
11 fairly aggressive schedule in the sense that -- I take it it
12 assumes that you are going to resolve all of the outstanding
13 objections, the most significant one appears to be the Cendant
14 objection. But resolve it from the standpoint of disclosure,
15 not from the standpoint of actually resolving the underlying
16 merits.

17 MR. NYHAN: That is correct, Your Honor.

18 THE COURT: And then deal with whatever issues may be
19 raised by the United States Trustee once the Amended Disclosure
20 Statement is in place. So, I wish I could give you a more
21 definitive answer than that. If we kick over into the next
22 week, the first available time is during the week of the 9th.
23 Should we try to find it during the week of the 9th and come to
24 Arizona or should we just wait until the 16th? My goal is to
25 be as accommodating as possible, but I must tell you then that

Writer's Cramp, Inc.

Certified Court Transcribers

732-329-0191

1 I've had a couple of weeks recently where the bulk of my time
2 in Arizona has been spent on Delaware cases and has created a
3 real serious problem in terms of actually doing my real job,
4 which is the 3,000 cases I have in Arizona.

5 (Laughter)

6 THE COURT: And so I'm sensitive to that and any --
7 and frankly, what that means is that if something goes haywire
8 where I have something that an emergency comes up or if there
9 is a hearing that goes too long, I'll give precedence to that
10 over the Delaware cases and then meanwhile we've had a bunch of
11 counsel who've traveled who are there and if we can't fit it in
12 that day or if we have to wait until the next day, it ends up
13 not necessarily being that good. This is not an ideal
14 situation, obviously and would be better, as much fun as I have
15 here, for Congress to create some more judgeships so that we
16 don't have to do this. But it's the reality that we're all
17 dealing with.

18 MR. NYHAN: --Your Honor, if I may have an opportunity
19 to confer with the Committee.

20 THE COURT: All right.

21 (Pause in proceedings)

22 MR. MARCUS: Your Honor, we would like to shoot for
23 the 4th, if your schedule permits once you hear back from your
24 Court. The second choice would be to have the hearing on the
25 9th if your schedule permits. And we do believe each week is

Writer's Cramp, Inc.

Certified Court Transcribers

732-329-0191

1 significant here.

2 THE COURT: The 9th or the week of the 9th?

3 MR. MARCUS: The week of the 9th. As early as
4 possible in that week, Your Honor.

5 THE COURT: Right. Well, we will just have to get
6 back to you on that.

7 MR. MARCUS: Okay. Thank you.

8 THE COURT: But I assume that will not change
9 anybody's efforts to get the amendments and the Motion to
10 Approve done. The only problem is the question of noticing and
11 what the notice says when it goes out.

12 MR. NYHAN: That is correct, Your Honor.

13 THE COURT: Okay.

14 MR. NYHAN: Your Honor, that is all we had on those
15 matters. If I may then turn it over -- I believe there are a
16 couple other matters on the agenda. Thank you.

17 (Pause in proceedings)

18 THE COURT: Now, let me just -- before we leave that,
19 let me make sure I understand what we're actually looking for
20 here. What is your expectation in terms of the needed time for
21 a hearing?

22 MR. NYHAN: Your Honor, I would hope it would be very
23 brief, but candidly I think that we should assume that it is --
24 we should have two hours -- a minimum of two hours booked for
25 it, because if there is going to be argument, if there are

Writer's Cramp, Inc.

Certified Court Transcribers

732-329-0191

1 going to be objections, I don't think it's prudent to plan on
2 less.

3 THE COURT: Now, is that both for the settlement and
4 the disclosure hearing?

5 MR. NYHAN: Yes, Your Honor. I don't expect, and I
6 look to my colleagues, but I don't expect that the settlement
7 will take long at all. We really anticipate no objections to
8 that.

9 THE COURT: So the real issue is going to be the --

10 MR. NYHAN: The Disclosure Statement.

11 THE COURT: -- the Disclosure Statement.

12 MR. NYHAN: That's correct.

13 THE COURT: All right.

14 (Pause in proceedings)

15 THE COURT: Okay.

16 MR. WILE: Good afternoon, Your Honor. Kenneth Wile
17 on behalf of Brac and the other Debtors to address the Jaeban
18 Adversary Proceeding which we discussed on the phone, back
19 before Christmas. And sadly, I'm here to tell you we have
20 stepped backwards rather than forwards. Not only do we still
21 not have any dates for depositions in the U.K. and that's where
22 I believe all the depositions will take place. And not only do
23 we not have the documents that were promised for last week, but
24 we have just received a motion which the Court may have seen in
25 which counsel for Jaeban here in Delaware, Morris Nichols firm

Writer's Cramp, Inc.

Certified Court Transcribers

732-929-0191

1 has asked to withdraw because Defendant has failed
2 substantially to fulfill its obligations. So that leaves us
3 frustrated and fighting off delay as best we can. We did have
4 a couple of conversations with U.K. counsel. At first it
5 appeared we were on the same page, that was on the day of our
6 last conference and then last Wednesday in a conference that my
7 English colleague more or less compelled from the other side
8 without discussing -- without disclosing our discussion of the
9 merits, we were furnished with a request for another 30 day
10 standstill, which we obviously declined. We were told that the
11 principals would meet over in the U.K. today. They haven't. I
12 learned just coming into the Courtroom that allegedly there was
13 going to be a meeting on Thursday. I would hope there would be
14 a meeting on Thursday, but I hope the Court will forgive the
15 little bit of skepticism on our part until that occurs. That
16 being the case, we have no choice but to move forward as
17 quickly as we possibly can. We do have a Motion for a Partial
18 Summary Judgment for a turnover order essentially ready to go
19 save only for an affidavit of U.K. law. The parties have been
20 discussing a settlement -- I'm sorry, a hearing date -- we'd
21 like to make that hearing date also the hearing date for our
22 motion. It's a very simple, straightforward motion and the
23 motion would be critical because if the Court decides the
24 motion has merit my colleagues in the U.K. and their clients
25 can go in and finally protect Brac's interest over in the U.K.

Writer's Cramp, Inc.

Certified Court Transcribers

732-329-0191

1 because as we speak, the receivers of Jaeban are fairly close
2 to having sold off most of their assets. So that we plan on
3 filing no later than Friday. And then, we're still left with
4 the outstanding discovery and we would like, at best, an
5 ammunition or worse rather ammunition from the Court that we
6 have deposition dates and that we have the documents disclosed
7 by Friday. Now, ordinarily that would be extraordinary since
8 Delaware counsel has moved to withdraw. But, I think as their
9 motion reflects, all the work has been done by the U.K. We've
10 had some difficulty getting perhaps the solicitors and perhaps
11 their clients to focus in the U.K. and I think rigorous
12 deadlines might help us resolve the case, or at the very least,
13 protect the necessary interest of the Debtor and the Estate.

14 THE COURT: Well, a proposed date let's say of
15 February 4th, is that what you're saying?

16 MR. WILE: That would be fine by us, Your Honor.

17 THE COURT: For a -- for a hearing on a Motion for
18 Summary Judgment that has not yet been filed, certainly would
19 not comport in my District with local rules regarding
20 necessary time periods for motions for summary judgement.

21 MR. WILE: I'll look to my colleagues, but I think in
22 Delaware all things are possible.

23 (Laughter)

24 THE COURT: Frankly it does strike me that if we're
25 responding to a Motion for Summary Judgment that's being filed

Witter's Cramp, Inc.

Certified Court Transcribers

732-329-0191

1 against an entity where local counsel is now seeking to
2 withdraw, I understand why that would be desirable from your
3 standpoint, but it seems to me perhaps a bit overreaching.

4 MR. WILE: Well the problem we face, Your Honor, we
5 face the same, I think, even graver exigency than the other
6 aspects of the case present because assets are being sold off
7 and if we can be delayed long enough then the receivers of the
8 Defendant will have one less set of problems with which to
9 deal. Obviously, we'd be grateful for whatever the earliest
10 date the Court considers to be appropriate. We're well aware
11 that there needs to be a change of counsel and there will be,
12 you know, some limited amount of U.S. law issues under the Code
13 to be addressed. Perhaps the best thing is simply for us to
14 get the motion on file and then find out what opposing counsel
15 thinks he, she or they need. But, we really are facing some
16 distress here in protecting our rights over in the U.K. And it
17 may well have been that our December conference call -- we were
18 -- we may have misinterpreted what we were told. But in any
19 event we have it ready to go. I have in fact -- my portion is
20 already drafted and we want to get it on file and perhaps it
21 would only be fair for me to have a conference -- conversation
22 with substitute counsel and then we can perhaps bring that to
23 the Court's attention --

24 THE COURT: Do we know where the Defendant is with
25 regard to substitute counsel?

Writer's Cramp, Inc.

Certified Court Transcribers

732-329-0191

1 MR. WILE: No, Your Honor.

2 THE COURT: I think I'm going to find out right now.

3 (Laughter)

4 MR. WILE: Absolutely.

5 MR. BRIGGS: Tom Briggs of -- Tom Briggs of Morris,
6 Nichols, Arsht & Tunnell, Your Honor. Unfortunately I don't
7 have much more to add in terms of where we are with substitute
8 counsel. Our efforts to contact Jaeban and Jaeban receivers
9 have been largely unsuccessful over the last couple of weeks,
10 especially since we filed our motion last Wednesday. So, I'm
11 not sure where they stand in terms of getting substitute
12 counsel.

13 THE COURT: Well perhaps one way to deal with this is
14 not to grant your motion. And that's a serious comment.

15 MR. BRIGGS: I would suggest, Your Honor, we undertook
16 the representation of Jaeban last August. Since then, our firm
17 has not been paid one single dollar. We have sent them
18 numerous e-mails and telephone calls trying to get this issue
19 resolved. And in fact we have not formally been retained by
20 the Jaeban receivers, which I believe is a different animal
21 than Jaeban itself. So, I'm not sure that we even represent
22 the receivers at this point. And we would like to withdraw
23 from representing Jaeban because it is becoming a burden,
24 especially if Budget intends to file a Motion for Summary
25 Judgment or Partial Summary Judgment or if discovery gets moved

Writer's Cramp, Inc.

Certified Court Transcribers

732-329-0191

1 forward, obviously this is going to increase the cost
2 significantly, which would increase burdens of Morris Nichols.

3 THE COURT: Okay. Now, refresh my recollection, I
4 don't believe there is a pending judicial procedure here. Is
5 that correct or am I wrong about that?

6 MR. WILE: I'm sorry, pending --

7 THE COURT: In England, in U.K.?

8 MR. WILE: Receivers have been appointed as such, but
9 no there's no actual law suit or adversary filed.

10 THE COURT: These are the classic U.K. --

11 MR. WILE: Administrative receivers under the
12 Insolvency Act, Your Honor.

13 THE COURT: So there is no Court to Court
14 communication that could take place that might put a little
15 fear of God in the folks on the other side through a U.K. Judge
16 because it sounds like there's no UK Judge who's assigned over
17 this receivership?

18 -- MR. WILE: Sadly no, Your Honor.

19 THE COURT: Okay. Anybody else wish to weigh in in
20 connection with this matter? Tell me what your Motion for
21 Summary Judgment will look like.

22 MR. WILE: Glad to, Your Honor. During extensive
23 discussions -- I'm sorry, Your Honor, let me back up half a
24 step to what the claim is. Our claim is for 3,000,000 pounds,
25 which is based entirely on what the books at Brac showed where

Witter's Cramp, Inc.

Certified Court Transcribers

732-329-0191

1 due and owing from Jaeban, which is a franchisee that covered
2 the north of England and certain parts of Scotland and there
3 are books. In the course of the discussions, many of which
4 were settlement discussions, but in the course of those
5 discussions, counsel for Jaeban, who are still the U.K.
6 solicitors in the case, sent us a calculation. It's not marked
7 without prejudice or anything else, and it listed at the end of
8 the day taking some fairly wild discounts, that even after
9 taking those discounts, 328,000 pounds were due and owing to
10 Brac. At this point we'd like to come in and move for partial
11 summary judgement and a turnover order. And that's in an
12 amount which would in turn transform Brac into a proper
13 Creditor of Jaeban and they can deal with the receivers
14 accordingly. Their interest would then have to be considered
15 along with everyone else's.

16 THE COURT: Is there any procedure you are aware of in
17 the U.K. for any kind of an effective prejudgment remedy being
18 asserted in the U.K. that can be used to freeze assets or
19 prevent the dissipation of assets?

20 MR. WILE: I hesitate to commit malpractice beyond
21 mentioning the Insolvency Act, but I have colleagues who know
22 the answer to that. I believe the answer is no because we've
23 been asking ourselves over and over as the delay has become
24 more manifest, is there anything we can do in the U.K.? So far
25 this has been the best, but I will certainly ask my colleagues

Witter's Cramp, Inc.

Certified Court Transcribers

732-329-0191

1 again.

2 THE COURT: Okay, anybody else?

3 ALL: (No verbal response).

4 THE COURT: When do you think you can get this filed
5 by?

6 MR. WILE: Friday, Your Honor.

7 THE COURT: Friday is -- let me look here, 16th?

8 THE CLERK: The 16th. The 16th, Your Honor.

9 THE COURT: The 16th.

10 (Pause in proceedings)

11 THE COURT: Okay. I'll assume that you're going to
12 file this by Friday the 16th. I'll set the response date for
13 two weeks later, January 30. In the event we set the hearing
14 for the 4th, I will make a reply due noon on the 3rd. I'll
15 require that the 30th -- well, I'll put it this way. I'll
16 grant the Motion to Withdraw of the current counsel. The
17 notice will be -- that will be sent out will indicate that
18 substitute Delaware counsel has to be obtained in time to file
19 the response by the 30th. Failure to file a response by the
20 30th will be taken as consent to the entry of a motion -- of
21 the order granting the partial summary judgement. And that a
22 response filed only by U.K. counsel will not be considered. In
23 the event the hearing is set for the week of the 9th, we'll
24 make the reply date instead the 5th of February and will have
25 the hearing at the same time that we're currently scheduled.

Writer's Cramp, Inc.

Certified Court Transcribers

732-329-0191

1 And I should say there's always the possibility that the
2 hearing will be here in Delaware during the week of the 16th
3 because I don't have current access to my Court calendar, for
4 either the 4th or the week of the 9th and I just don't know
5 whether or not there's time set aside for that -- time I can
6 set aside for it. But that's sort of the working arrangement
7 and staff here in Delaware will be in contact with you with
8 regard to what the exact date is.

9 MR. WILE: Your Honor --

10 THE COURT: It does seem to be that that's number one,
11 an aggressive schedule, but number two, I'm taking -- counsels
12 vows here to me at face value that there is an emergency
13 created here by the fact that apparently there is no incentive
14 on the side of Jaeban to move this along. And that there's no
15 adequate basis for creating an incentive under applicable U.K.
16 law. Other than getting a judgment, which you can presumably
17 domesticate in the U.K. and if -- and then seek to enforce as a
18 judgment Creditor rather than as a Prejudgment Creditor. So
19 based upon all of that, I've set that schedule.

20 MR. WILE: Your Honor, if I may return to discovery
21 for just one second. Should we proceed by a Motion to Compel
22 at this point with respect to documents and deposition dates?

23 THE COURT: It seems to me yes that one of two things
24 will happen: Either the documents and the depositions will
25 take place or you will be able to ask for a sanction that would

Writer's Cramp, Inc.

Certified Court Transcribers

732-329-0191

1 render that not necessary. But you can only do that, I think,
2 get that kind of a sanction in the context of a -- of a Motion
3 to Compel as opposed to -- or in the context of disobeying an
4 Order to compel, frankly. So, you should proceed on that same
5 basis. Now I take it that what you're talking about is not
6 necessary to the Motion for Partial Summary Judgment --

7 MR. WILE: Correct, Your Honor.

8 THE COURT: -- because what you're relying upon,
9 basically, is their admission that they owe at least that
10 amount of money --

11 MR. WILE: Exactly.

12 THE COURT: -- and you're motion is going to be,
13 "Grant us judgment at least for that amount of money without
14 prejudice, the fact that we think we can prove you owe us
15 more."

16 MR. WILE: And it will less than ten pages, Your
17 Honor.

18 THE COURT: Okay. So I think -- they're still
19 entitled to their due process that comes from the motion
20 practicing and discovery disputes and I think that would be the
21 best way to proceed. Okay?

22 MR. WILE: Thank you, Your Honor.

23 THE COURT: Anything else on that?

24 MR. BRIGGS: Your Honor, I do have here a Proposed
25 Form of Order.

Witter's Cramp, Inc.

Certified Court Transcribers

732-329-0191

1 THE COURT: I'm not surprised.

2 (Laughter)

3 (Pause in proceedings)

4 MR. BRIGGS: Thank you, Your Honor.

5 (Pause in proceedings)

6 THE COURT: I just want to ask for the record, I want
7 to make sure that there is nobody else in the Courtroom
8 representing -- or on the telephone representing the interests
9 of Jaeban, other than the Morris Nichols firm, whom I've just
10 signed the order? In other words, there's no proposed new
11 counsel who is here who has been asked by the client to be at
12 this hearing?

13 ALL: (No verbal response).

14 THE COURT: I'll note the non-appearance of any
15 additional counsel.

16 MR. MORTON: I believe those were all the matters that
17 were scheduled by the Debtor's today.

18 THE COURT: All right. Thank you. We'll be in touch
19 with regard to scheduling the other matter.

20 ALL: Thank you, Your Honor.

21 (Court adjourned)

22

23

24

25

Writer's Cramp, Inc.

Certified Court Transcribers

732-929-0191

CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

James Paul
Signature of Transcriber

1-29-04
Date

Writer's Cramp, Inc.

Certified Court Transcribers

732-329-0191